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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/690,091	10/21/2003	Wolfgang Weiss	GK-HEF-965 / 500639.20032	4829
7590 12/08/2005			EXAMINER	
Gerald H. Kiel, Esq. REED SMITH LLP 599 Lexington Avenue New York, NY 10022-7650			FRISTOE JR, JOHN K	
			ART UNIT	PAPER NUMBER
			3751	

DATE MAILED: 12/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

*RLR*

<b>Office Action Summary</b>	Application No. 10/690,091	Applicant(s) WEISS, WOLFGANG	
	Examiner John K. Fristoe Jr.	Art Unit 3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 October 2003.  
 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.  
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-16 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
 6) ☒ Claim(s) 1-14 and 16 is/are rejected.  
 7) ☒ Claim(s) 15 is/are objected to.  
 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
 10) ☒ The drawing(s) filed on 21 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \* c) ☐ None of:  
         1. ☐ Certified copies of the priority documents have been received.  
         2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
         3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
     \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>10/21/2003</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Information Disclosure Statement***

1. The information disclosure statement filed 10/21/2003 is acknowledged by the examiner. However it appears that there was a typographical error on the form. U.S. Pat. No. 4,660,141 was listed but in the specification U.S. Pat. No. 4,560,141 is listed. Since U.S. Pat. No. 4,560,141 appears to be more relevant the examiner has crossed out U.S. Pat. No. 4,660,141 from the IDS and has included 4,560,141 on the notice of references cited form mailed with the instant Office action.

### ***Claim Objections***

2. Claims 1-3, 5, 6, and 12-16 are objected to because of the following informalities: the term "diaphragm" is used to describe a plate with a hole passing through it. This is not commensurate with the accepted definition in the art of "diaphragm". This term should be replaced with a term such as "restrictor" or "throttle". Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-8, 12-14, and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Pat. No. 1,609,894 (Trent). Trent discloses a valve comprising a valve body (1), a valve opening (15), a valve plate (54), a diaphragm plate (55) having at least one opening (59), a completely open position (figure 4), a closed position (when plate 54 is in the active position), a

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partially closed state (when plate 55 is in the active position), wherein in the active position the diaphragm plate (55) extends along the entire circumference beyond the cross sectional area of the valve opening (plate 57 in figure 4 is seen to extend around the valve opening), a through channel (10), a recess (11), wherein the diaphragm plate (55) or the valve plate (54) extends into the recess (figure 4) in the active position, wherein the diaphragm plate (55) or the valve plate (54) extends into the recess (figure 4) in the passive position, wherein the diaphragm plate (55) is moveable in its plane between passive position and an active position, wherein the diaphragm plate (55) is swiveable (about element 37), wherein the diaphragm plate (55) is displaceable in a straight line (about element 37), wherein the valve plate (54) is moveable into an intermediate position (the valve member is moved via handle 63 and is capable of stopping between the fully open and fully closed position).

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 1,609,894 (Trent) in view of U.S. Pat. No. 6,431,518 (Geiser). Trent discloses a valve comprising a valve body (1), a valve opening (15), a valve plate (54), a diaphragm plate (55) having at least one opening (59), a completely open position (figure 4), a closed position (when plate 54 is in the active position), a partially closed state (when plate 55 is in the active position), wherein in the active position the diaphragm plate (55) extends along the entire circumference

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beyond the cross sectional area of the valve opening (plate 57 in figure 4 is seen to extend around the valve opening), a through channel (10), a recess (11), wherein the diaphragm plate (55) or the valve plate (54) extends into the recess (figure 4) in the active position, wherein the diaphragm plate (55) or the valve plate (54) extends into the recess (figure 4) in the passive position, wherein the diaphragm plate (55) is moveable in its plane between passive position and an active position, wherein the diaphragm plate (55) and the valve plate (54) are swiveable (about element 37), wherein the diaphragm plate (55) and the valve plate (54) are displaceable in a straight line (about element 37), wherein the valve plate (54) is moveable into an intermediate position (the valve member is moved via handle 63 and is capable of stopping between the fully open and fully closed position but lacks the valve plate that is moveable between a completely closed position and a position in the plane in which is completely covers the valve opening but is raised from the valve body. Geiser teaches a valve comprising a valve body (1), a valve opening (2), a valve plate (5) that moves a completely closed position (figure 3) and a position in the plane in which is completely covers the valve opening but is raised from the valve body (figure 2). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the valve assembly of Trent by displacing the valve toward the valve opening as taught by Geiser in order to increase the pressure of the valve plate on the valve opening in order to more effectively close the valve opening.

***Allowable Subject Matter***

7. Claim 15 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims as well as overcoming the claim objection listed above.

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8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John K. Fristoe Jr. whose telephone number is (571) 272-4926.

The examiner can normally be reached on Monday-Friday, 7: 00 a.m-4: 30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine R. Yu can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



John K. Fristoe Jr.  
Examiner  
Art Unit 3751

JKF



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12/5/05